

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

CONTINENTAL CASUALTY	)	CASE NO.: 8:14-cv-00194
COMPANY, an Illinois corporation,	)	
	)	
Plaintiff,	)	
	)	<b>MOTION TO DISMISS</b>
v.	)	
	)	
GREATER OMAHA PACKING	)	
COMPANY, INC., a Nebraska	)	
corporation,	)	
	)	
Defendant.	)	

COMES NOW Defendant Greater Omaha Packing Company, Inc. (“Greater Omaha”), pursuant to Federal Rule of Civil Procedure 12(b)(1) and 12(b)(6), and moves the Court for an order and judgment dismissing Plaintiff Continental Casualty Co.’s (“Continental”) Complaint (Filing No. 1). Dismissing Continental’s Complaint is appropriate because (1) the facts plead in the Complaint and in documents embraced by the Complaint demonstrate that Continental has a duty to defend Greater Omaha in the lawsuit Fairbank Reconstruction Corp. v. Greater Omaha Packing Co., Inc., Case No. 1:13CV907 (W.D.N.Y.), and (2) there is no actual justiciable controversy for this Court to determine because Continental seeks a determination regarding the legal effect of a set of facts which are future, contingent, or uncertain, making a declaratory judgment remedy inappropriate at this time. Therefore, Continental’s Complaint fails to state a upon which relief can be granted, and the Court lacks subject-matter jurisdiction over this action, making dismissal of the Complaint proper. See Fed. R. Civ. P. 12(b)(1) and (6).

In support of this Motion to Dismiss, Greater Omaha submits a supporting brief and index of evidence. The materials contained in the index of evidence constitute either materials that are necessarily embraced by the pleadings or are matters of public record. Therefore, the

Court may consider these materials without converting this Motion to Dismiss into a Motion for Summary Judgment, under Rule 12(d). Miller v. Redwood Toxicology Lab., Inc., 688 F.3d 928, 931 (8th Cir. 2012); Ashanti v. City of Golden Valley, 666 F.3d 1148, 1151 (8th Cir. 2012).

WHEREFORE Greater Omaha respectfully requests the Court enter an order and judgment dismissing Continental's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6).

Dated this 10th day of November, 2014.

Respectfully submitted,

GREATER OMAHA PACKING COMPANY,  
INC., Defendant

BY: /s/ Michael F. Coyle

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CERTIFICATE OF SERVICE

This is to certify that on the 10th day of November, 2014, a copy of the above and foregoing was filed with the Clerk of the Court using the CM/ECF system, which will deliver notice of the foregoing to the following recipient:

Dan H. Ketcham  
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/s/ Michael F. Coyle

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